IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 173 of 2001
(Old No. 960 of 1986)

Nand Kishore Pathak
S/o Narottam Pathak
R/o Kimmatpur Baijnath,
P.S. Haldwani, District Nainital.

…. Appellant

Versus

The State

…. Respondent

Mr. P.C. Bisht, Advocate for the appellant.
Mr. S.S. Adhikari, A.G.A. for the respondent State.

Hon. Prafulla C. Pant, J.

This appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 12.03.1986, passed by learned II Additional Sessions Judge, Nainital, in Sessions trial No. 138 of 1984, whereby the appellant Nand Kishore Pathak has been convicted under Section 325 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.), and sentenced to undergo rigorous imprisonment for a period of one year.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that on 23.11.1983, at about 5:00 P.M., accused / appellant Nand Kishore Pathak caused injuries with a deadly weapon “DARATI’ (sickle) and Lathi on the person of Smt. Radhhika Devi (grand mother of

the informant). The first information report (Ext. A –1) was lodged on that very day by P.W. 1 Harish Chandra Joshi (informant), S/o Ishwari Dutt Joshi, with police outpost Mukhani, Police Station Haldwani. It is said that the incident was witnessed by P.W. 2 Harish Chandra Joshi (S/o K.D. Joshi) and P.W3 Hayat Singh. The first information report was registered as crime No. 853 of 1983, against the accused Nand Kishore Pathak, in respect of offence punishable under Section 308 of I.P.C. P.W. 4 Sub Inspector Anand Lal, investigated the crime, who after interrogating the witnesses, submitted the charge sheet (Ext. A –10) against accused/ appellant Nand Kishore Pathak, for his trial in respect of offence punishable under Section 308 of I.P.C.

4) It appears that on receipt of charge sheet, learned Magistrate after giving necessary copies to the accused, committed the case to the court of Sessions for trial. The learned II Additional Sessions Judge to whom the trial was transferred, after hearing the prosecution and the defence, framed charge of offence punishable under Section 307 of I.P.C., against the accused / appellant Nand Kishore Pathak. The accused pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Harish Chandra Joshi S/o Ishwari Dutt Joshi (informant); P.W. 2 Harish Chandra Joshi S/o K.D. Joshi (an eyewitness); P.W. 3 Hayat Singh (another eyewitness) and P.W. 4 Sub Inspector Anand Lal (the Investigating Officer). A medical injury report (Ext. A –2) was also produced by the prosecution in support of its case. Genuineness of said document was admitted by the defence counsel. The documentary and oral evidence was put to the accused under Section 313 of Cr.P.C., in reply to which the accused alleged the same to be false. After hearing

the parties, the trial court found the accused Nand Kishore Pathak guilty of the offence punishable under Section 325 of I.P.C. only, and convicted him accordingly. Again, after hearing on sentence, the trial court sentenced the convict to rigorous imprisonment for a period of one year. Aggrieved by said judgment and order dated 12.03.1986, passed in Sessions Trial No. 138 of 1984, convict Nand Kishore Pathak preferred this appeal before the Allahabad High Court on 20.03.1986, from where it is received by transfer to this Court under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

5) Before further discussions, it is pertinent to mention here the injuries found on the person of the injured Smt. Radhika Devi, who was medically examined on the day of incident i.e. 23.11.11983, at 06:50 P.M., by the Medical Officer of Civil Hospital, Haldwani. The said document Ext. A –2 discloses following injuries on the person of the injured:

> ***"1. Lacerated wound 7 cm X 1.5 cm X bone deep on the right scalp, 4 cm above the right ear. Bleeding present. Advised X-ray of skull.***
> ***2. Contusion 6 cm X 5 cm on the right chest 0.10 cm below axilla (subcutaneous). X-ray advised of the chest."***

The X-ray report (Ext. A -3) prepared by the Medical Officer discloses that there was fracture on the right temporal bone and also on the 5^{th} , 6^{th} and 8^{th} rib of the chest.

6) Now, I examine the oral evidence adduced by the prosecution witnesses. P.W. 2 Harish Chandra Joshi (S/o K.D. Joshi) and P.W. 3 Hayat Singh, are the two

eyewitnesses, who have supported the prosecution story. It has been stated by these two witnesses that on the day of incident, on hearing shrieks of the lady, they saw the incident. P.W. 2 Harish Chandra Joshi (S/o K.D. Joshi) states that from his roof top he saw that in his neighbourhood accused Nand Kishore was assaulting the old lady (injured) with sickle and lathi. P.W. 3 Hayat Singh has also corroborated the statement, who also states that he was on his field when he witnesses accused Nand Kishore causing hurt to the old lady.

7) P.W.1 Harish Chandra Joshi (S/o Ishwari Dutt Joshi) is the informant, who is grandson of the injured old lady. This witness has stated that his grandmother has now expired. As such, there is sufficient explanation with the prosecution for not examining the injured. This witness P.W. 1 Harish Chandra Joshi (S/o Ishwari Dutt Joshi) further told the court that he lodged the first information report on the very evening on the day of incident. He proved the report Ext. A –1.

8) Above oral testimony read with the medical report, quoted above, fully proves charge of offence punishable under Section 325 of I.P.C. against the accused / appellant Nand Kishore Pathak. This Court is in agreement with the finding of the trail court that the prosecution has been successful in proving the charge of offence punishable under Section 325 of I.P.C. against the accused Nand Kishore. As Such , the conviction recorded by the trial court, deserves to be upheld. However, as far as the sentence of rigorous imprisonment for one year is concerned, the same needs to be reduced in

view of the circumstances shown before this Court. Learned counsel for the appellant pointed out that the convict is now an old man over 60 years. No useful purpose would be served by sentencing the senior citizen to jail at this stage, who has already undergone for about a month in jail, during the trail and the appeal. Punishment provided under Section 325 of I.P.C. requires that the convict should be sentenced not only to the imprisonment but also to the fine. Considering the facts and circumstances, nature of case, and the period of litigation, this Court reduces the sentence of imprisonment awarded by the trial court to the period already undergone and further directs that the appellant shall pay fine of Rs. 1,000/-, (Rupees one thousand only) within a period of one month from today, failing which he shall undergo rigorous imprisonment for a period of three months.

9) Accordingly, the sentence has been modified and appeal stands, partly allowed. Appellant is on bail. He need not to surrender provided he deposits the fine as directed by this Court. The registry is directed to send the lower court record back to the trail court.

(Prafulla C. Pant, J.)

Dt. May 01, 2007.
H.Negi